

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

Maxant Technologies, Inc. and American
Manufacturing and Technologies, Inc.,
a Single Integrated Enterprise¹

Employer

And

Case 13-UC-385

Local 1, Service Employees International Union²

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on June 24, 2005 before a hearing officer of the National Labor Relations Board, herein referred to as the Board.³

I. Issues

The Petitioner seeks to clarify the existing bargaining unit by including two additional employees Maria Carilla and Marcin Grzymkowski,⁴ who began working at the Employer's facility in July, 2003 as a result of Maxant's acquisition of American Manufacturing & Technologies, Inc. (hereafter referred to as "AMTI").

¹ The parties stipulated that for purposes of this hearing, Maxant Technologies, Inc. and American Manufacturing Technologies, Inc. are a single integrated enterprise based upon common ownership or financial control of the two entities.

² The names of the parties appear as amended at hearing.

³ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

⁴ Petitioner's original petition sought clarification of the unit regarding three individuals. At hearing the parties stipulated that one of these individuals, Karl Schmidt did not have a community of interest with the existing bargaining unit sufficient to be included in that unit. At hearing the Petitioner amended the original petition to reflect this stipulation and now seeks clarification with regard to only two individuals, Maria Carilla and Marcin Grzymkowski.

The Employer maintains that the Petitioner's unit clarification request is untimely.⁵ Additionally, the Employer takes the position that the two employees at issue do not share a community of interest with the existing bargaining unit sufficient to require their inclusion in the unit.

II. Decision

As will be more fully discussed below, clarification of the unit as requested by Petitioner is not warranted inasmuch as the two employees at issue do not share a sufficient community of interest with the existing bargaining unit to mandate their inclusion in that unit.

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed.

III. Statement of Facts

Maxant

The Petitioner and Maxant Technologies, Inc. are parties to a collective bargaining agreement effective February 1, 2003 to February 1, 2006. As set forth in that agreement, the current bargaining unit consists of "All of the employees at (Maxant's) plant in Niles, Illinois and vicinity engaged in the manufacturing, shipping and receiving departments." At the time of the hearing, there were seventeen employees in this unit.

Maxant is a corporation whose bargaining unit employees assemble metal boxes⁶ which are then sold through distributors to end line customers such as hospitals and physician offices. Bargaining unit members assemble, pack and ship these boxes. Maxant employee and chief union steward Verna Jones estimated that on average, bargaining unit employees assemble approximately 240 boxes per day. These boxes are sold for around \$150.00 - \$200.00 each.

Jones testified that assembly of these boxes requires no specialized education or training. In performing this work, Jones testified that she used tools such as an air gun for the "nut driver", cutters, screwdrivers, pliers, clamps and magnets. Additionally, bargaining unit employees use soldering equipment in assembly of these boxes. Bargaining unit employees do not work from blue prints or other schematics in assembling these boxes. After the boxes are assembled they move to the packing department where bargaining unit employees pack the finished product.

⁵ Unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who come within a newly established job classification, such as the employees at issue in the instant matter. *Union Electric Co.*, 217 NLRB 666, 667 (1975). It is undisputed that the employees at issue fall within new job classifications, those being technician and machinist. The instant petition seeking clarification regarding the placement of those individuals is therefore appropriate although it was filed well after those individuals began working at the Employer's facility. In this regard, record evidence demonstrated that the Petitioner herein immediately invoked the parties' grievance process after the Employer refused the Petitioner's request to represent Carilla and Grzymkowski. After the conclusion of that lengthy process and the Employer's steadfast refusal to include these employees in the established bargaining unit, the Petitioner filed the instant petition. Under these circumstances I find that the Petitioner's petition is timely and further processing will effectuate the purposes and policies of the Act.

⁶ These metal boxes serve as the "housing" for light fixtures used to read x-rays and blue prints. Maxant does not produce, manufacture or assemble any other aspect of the light fixture apart from these metal boxes.

The packed items are then move to the shipping department from which bargaining unit employees prepare and ship the boxes to distributors.

Wages for bargaining unit employees range from \$13.51 to \$14.96 per hour. Bargaining unit employees work from 6:30 a.m. to 3:00 p.m. and receive two ten minute breaks and a 35 minute lunch break per shift. Jones testified that the first break occurs from 8:35 a.m. to 8:45 a.m., lunch from 11:55 a.m. to 12:30 p.m. and the second break from 2:00 to 2:10 p.m. Lunch may be taken in the cafeteria or outside the plant. The two daily breaks may be taken in the cafeteria, outside the plant or on the plant floor.

Bargaining unit employees punch a time clock located near the entrance of the cafeteria. Bargaining unit employees are issued uniforms which they may choose to wear at their discretion. These uniforms consist of navy colored smocks or coats for women, and navy shirts and pants for men. There is no company insignia on these uniforms.

Bargaining unit employees receive about eleven holidays per year, health and life insurance benefits, and are eligible to participate in the Employer's 401K program. Jones explained that bargaining unit employees are eligible for one week vacation after working for six months; two weeks after two years, three weeks after seven years and four weeks after 13 or 14 years service. Bargaining unit employees are subject to a "point system" which relates to attendance.⁷ Bargaining unit employees are given a four minute grace period under this system.

Bargaining unit employees are supervised by Romero Patino⁸. Patino is responsible for directing and assigning work. Patino has no technical education or advanced degree.

AMTI

AMTI is a corporation which was formed approximately eleven years ago by Bonita DeVale and her husband Donald, an electrical design engineer. Ms. DeVale testified that AMTI is "focused around technology" and the design and fabrication of technological products. These products include the "Slice" line of precision measuring and cutting devices; the "Shrink", an industrial oven for fast processing of heat shrink tubing; delivery systems for those products referred to in the record as "Multicut systems" and "Strapper's Aid", machines that dispense a tiny, sensitized metal strip used primarily as a security device in library books; and keyless entry systems used in hotel safes and medical carts. AMTI's product line requires up to several weeks of production time for each unit. These units range in cost of up to \$28,500.00 each. AMTI sells its products in 28 countries, and its customers include 3M and the United States Military. As will be further discussed below, the employees at issue, Maria Carilla and Marcin Grzymkowski, build, test and repair these AMTI products.

AMTI was purchased by Maxant on or about April 21, 2003, and relocated its production operation to the Maxant facility. Seven AMTI employees began working from the Maxant

⁷ The record is devoid of any further explanation of Maxant's attendance policy or point system.

⁸ Jones refers to this individual as "Ramirez" periodically throughout the record.

location after the acquisition in April, 2003.⁹ These individuals were identified in the record as Ms. DeVale and her husband Donald; Mechanical engineers Paul Michaels, Karl Schmidt, and Susan Defano; John Genowig¹⁰; Maria Carilla and Marcin Grzymkowski. Ms. DeVale testified that after being acquired by Maxant, AMTI continued to run independently, maintaining separate management, budget, profit loss statements, production processes, products, marketing, customers and websites from those of Maxant. AMTI employees have never been represented by a union.

Working Conditions:

DeVale testified that AMTI's mechanical engineer Paul Michaels currently manages and supervises Carilla and Grzymkowski and has done so since well before AMTI's acquisition by Maxant.¹¹ In this regard, DeVale testified that Michaels is responsible for training these employees and assigns and schedules their work. Michaels has sole authority for granting time off for these employees because Michaels has sole responsibility for AMTI's production schedule.¹² Michaels has no supervisory authority with regard to Maxant employees.

Michaels and DeVale have the responsibility for disciplining, evaluating and determining wage increases for these employees. DeVale testified that wage increases for AMTI employees is merit based. No evidence was presented that Maxant supervisor Romero Patino has any authority to discipline or evaluate the employees at issue. Further, Patino does not direct, inspect or evaluate the work performed by the employees at issue inasmuch as Patino does not possess the requisite technical or engineering background.

AMTI provides a tuition reimbursement benefit for its seven employees which Maxant employees do not receive. All AMTI employees who now work at the Maxant facility are eligible to receive health and life insurance benefits through Maxant and participate in the 401K plan that Maxant employees receive. Carilla and Grzymkowski work the same hours, receive the same breaks at the same time, punch in at the identical time clock, and utilize the same cafeteria, locker rooms, washrooms and parking lot as do Maxant employees. Carilla's and Grzymkowski's wages do not fall within the bargaining unit's pay scale. In this regard, bargaining unit employees are paid between \$13.51 to \$14.96 per hour. By contrast, Carilla is paid \$15.38 per hour and Grzymkowski receives \$12.14 per hour.

⁹ The record is silent as to how many individuals were employed by AMTI prior to AMTI's acquisition by Maxant, what became of such additional employees after the acquisition if they in fact existed, and whether AMTI employed additional individuals at locations other than the Maxant facility after AMTI's acquisition by Maxant in April, 2003.

¹⁰ The record did not explain what position Mr. Genowig holds, however, the Petitioner does not seek to represent him by virtue of the instant petition.

¹¹ DeVale estimated that Michaels has supervised these individuals for more than seven years.

¹² Chief steward Verna Jones testified that she observed Patino grant time off for these employees. DeVale explained that Patino's function in this matter was merely administrative in that he only documented their absence, and that Patino had no authority to grant these employees time off because he played no role in AMTI's production process.

INTERCHANGE:

Chief Steward Verna Jones testified that from the time that Maxant acquired AMTI in or around April, 2003 to the date of the instant hearing she was once assigned to perform “sub assembly” work on an AMTI product for a period of about two weeks. (AMTI products and their production process will be further discussed below). For this job Jones used a nut driver and other non specialized hand tools. Jones did not work from blue prints or schematics in performing this assignment. Jones testified that she has observed other bargaining unit employees periodically assigned to assist in the non technical aspects of sub assembling the AMTI product during this period for a portion of their shift and then return to their regular Maxant production work. Jones acknowledged that these assignments to work on AMTI products were dictated by work load. Jones further testified that she did not understand or possess any knowledge the mechanical engineering aspects of the AMTI production process.

Jones testified that on one or two occasions Maria Carilla was assigned to assist in the production of Maxant’s metal boxes, again due to work load. Jones testified that she observed Marcin Grzymkowski perform work in the shipping and receiving department during a two week period that the bargaining unit member regularly assigned to work in that area was on vacation. These were the only instances Jones described wherein Carrillo or Grzymkowski, the employees at issue, performed Maxant production work.

Bonita DeVale explained that while Maxant and AMTI house both their operations in a common warehouse, AMTI’s operations, including its machine shop, are separated from Maxant’s production process. Due to the separate and distinct nature of their products, AMTI and Maxant do not share tools or equipment. DeVale testified that Maxant bargaining unit employees are incapable of performing the duties of Carilla and/or Grzymkowski because Maxant employees do not possess the requisite training or educational background.¹³ DeVale further explained that the rare instances noted by Jones in which Carilla and Grzymkowski performed bargaining unit work arose due to emergency situations and were not regular occurrences. Further, DeVale disputed that Maxant employees regularly performed AMTI production work. DeVale explained that AMTI has a separate budget and accounting system from Maxant and that if a Maxant employee worked for any length of time on AMTI products, the cost of the employee’s salary would have been logged against AMTI’s account, and AMTI would have been charged for the cost. No such charges have been incurred or paid by AMTI.

Skills, Duties:

Maria Carilla

Carilla is classified as a technician and has thirty years experience working in the electronics industry. The Petitioner admits that this is a new job classification that did not exist prior to the time that the current collective bargaining agreement was executed. Throughout the

¹³ DeVale testified that at the very least, the classifications at issue require a high school education, and as the record demonstrates, further job related training is not only desired but encouraged by AMTI for its employees by virtue of its tuition reimbursement program. Bargaining unit employees have no such educational or vocational requirements or qualifications.

course of her career, Carilla has received technical training from engineers with electrical and mechanical engineers including Paul Michaels and Don DeVale.

Carilla is responsible for assembling, inspecting, testing, and repairing the various electronic equipment produced by AMTI as well as preparing written reports on the products she repairs, produces or inspects. In this regard, Carilla is responsible for creating a document referred to in the record as a “tracker sheet” for all AMTI machines which includes information including software codes used, machine calibrations, and documents the assembly, inspection and testing process of each of the machines. Carilla has sole responsibility for documenting, recording and maintaining the tracker sheets. Carilla is responsible for inputting this data into AMTI’s computer system. This data can then be accessed by AMTI engineers or management via computer should questions or issues subsequently arise.

DeVale testified that products returned to AMTI for refurbishing or repairs are delivered directly to Carilla who is solely responsible for analyzing the returned product. This involves taking the machine apart, testing, diagnosing the problem and making the repair. Carilla works independently without direction from supervisors or management. In performing this work, Carilla may initiate consultation with AMTI engineers or management at her discretion. Machines returned to AMTI for repairs or refurbishing are only released back to the customer following Carilla's approval.

Carilla is also responsible for constructing the electronic circuitry for AMTI machines. In performing these duties, Carilla works from blueprints or schematics. Tools used by Carilla in performing her work include an Oscilloscope which produces a visual light wave necessary for diagnostic trouble shooting; fluke and multi meters which are engineering devices used to compare voltages among the machines; soldering irons; magnifying instruments, and hand tools. In addition to working from blue prints and schematics, Carilla works from wiring documents in performing this electronic circuitry work

Marcin Grzymkowski

Grzymkowski is classified as a machinist. The Petitioner admits that this is a new classification or job description that did not exist at Maxant’s facility prior the execution of the present contract. Grzymkowski works in AMTI’s machine shop where he operates equipment identified in the record as the Bridgeport mills, lathes, including the Bridgeport Romney lathe, welding machines, micrometers, surface tester, grinding machines, and precision screwdrivers.

Grzymkowski is responsible for creating and drawing blueprints for the equipment he fabricates then works from the blueprint specification in cutting and manufacturing the AMTI product. Grzymkowski assists in machine repairs and in building prototypes of the machines marketed by AMTI. Grzymkowski works with his manager, mechanical engineer Paul Michaels, in performing these duties. In this regard, DeVale testified that Michaels prepares engineering drawings, which Grzymkowski then utilizes to build the AMTI product. Because these plans are subject to change and redrafts as the project progresses, such work necessitates regular interaction between Grzymkowski and Michaels. DeVale further testified that Grzymkowski’s

work, like Carilla's, was not routine, but was highly flexible and required a high level of discretion and independent thinking .

In addition to receiving training from Paul Michaels and Susan Defano, Grzymkowski has completed numerous job related classes and training courses including pro-engineering, Auto-Cad, advanced engineering design, and advanced engineering drawing. This training enables Grzymkowski to prepare “exploded drawings” for AMTI and its customers. DeVale explained that exploded drawings detail for a customer different elements of a machine outside its housing thereby assisting customers in determining their repair and replacement part needs.

Grzymkowski is supervised by Karl Schmidt and Paul Michaels. Schmidt is an AMTI machinist who has authority to train, direct and assign work to Grzymkowski.

DeVale testified that Grzymkowski earns \$12.14 per hour, but has a “very high earnings potential” based upon his projected progress through additional educational courses.

IV. Analysis

The Board has consistently followed a restrictive policy in finding accretions to existing bargaining units because employees accreted to such units are not accorded a self-determinative election. See e.g. *Compact Video Services, Inc.*, 284 NLRB 117, 119 (1987); *Melbet Jewelry Co.*, 180 NLRB 107 (1970). The Board will find accretion appropriate only where the disputed employees display “little or no separate group identity,” as well as demonstrate and “overwhelming community of interest” with the employees in the pre-existing unit. *Dennison Manufacturing Company*, 296 NLRB 1036 (1989); *Compact Video Services, Inc.*, *supra*; *Safeway Stores*, 256 NLRB 918 (1981). In determining whether employees in newly created positions, such as the employees at issue, share a sufficient community of interest with employees in an existing bargaining unit, the Board considers several factors including interchange and contact among employees, degree of functional integration, geographic proximity, similarity of working conditions, similarity of employees skills and functions, supervision and collective-bargaining history, with employee interchange and common day to day supervision being the two most important factors.. *Archer Daniels Midland Co.*, 333 NLRB 673, 675 (2001); *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), *enfd.*, 759 F.2d 1477 (9th Cir. 1985).

In the instant case, neither Carilla nor Grzymkowski share a group identity or overwhelming community of interest with bargaining unit employees sufficient to mandate their inclusion in the unit. Thus, record evidence demonstrates that Carilla and Grzymkowski are separately supervised by mechanical engineer Paul Michaels.¹⁴ Raises for these employees are merit based and are determined by AMTI management. In contrast, bargaining unit employees

¹⁴ As previously noted, Bonita DeVale explained that bargaining unit supervisor Romero Patino serves only in an administrative function in keeping records of when the employees at issue take time off, but plays no role in or has authority for the AMTI production process. Patino does not appear to possess the formal education or engineering background requisite to meaningfully direct or supervise the AMTI workforce. Further, no evidence was presented that Patino plays any role in the evaluation process for the employees at issue or has authority to discipline these employees.

receive contractually required regularly scheduled wage increases which do not appear merit based. Additionally, both Carilla and Grzymkowski are eligible for AMTI provided job related tuition reimbursement. Maxant bargaining unit employees receive no such benefit, if for no other reason than record evidence makes clear that their jobs do not require any specialized training or education.

No evidence was presented showing regular employee interchange between Maxant employees and the employees at issue.¹⁵ To the contrary, the Petitioner acknowledged that the products and production process for each entity was distinct. Additionally, record evidence demonstrates that bargaining unit employees do not possess the skills, educational background or training to perform the duties performed by Carilla and Grzymkowski. In this regard, the skills and functions of Carilla and Grzymkowski appear to be more similar to the skills and functions performed by AMTI's mechanical engineering staff as opposed to those of bargaining unit employees. Specifically, both Carilla and Grzymkowski work from blue prints and schematics; operate technically advanced equipment including computers; and work with a level of independent discretion which bargaining unit employees do not.

While certain common factors such as schedule, benefits including health and life insurance, 401K plan, shared time clock and other facilities may support a finding of accretion, the two most important factors, employee interchange and common supervision, clearly militate against such a finding. *E.I DuPont De Nemours, Inc.*, 341 NLRB No. 82 (April 20, 2004).

Inasmuch as record evidence demonstrates that Carilla and Grzymkowski possess a separate group identity from bargaining unit employees, and do not share an overwhelming community of interest with those individuals, I decline to include them in the existing bargaining unit by means of the instant petition. *Towne Ford Sales, supra*; *Giant Eagle Markets Company*, 308 NLRB 206 (1992); *Safeway Stores, supra*.

¹⁵ The instances described by union steward Jones wherein Grzymkowski assisted in the packing department once during a period when the bargaining unit employee regularly working in that area was on vacation, and the one or two occasions Jones observed Carilla performing Maxant production work do not appear to be a regular or recurring practice but rather arose due to "work load". Moreover, although Jones claims to have performed and observed other bargaining unit employees perform AMTI production work, the record makes clear such work was not of the technical, specialized nature of the bulk of the work regularly performed by Carilla or Grzymkowski. In any event, any such non-technical assembly work which may have been performed by bargaining unit employees for AMTI products was not of such magnitude that AMTI was charged or paid for the services allegedly performed by Maxant employees.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **August 3, 2005**.

DATED at Chicago, Illinois this 20th day of July 2005.

/sHarvey A. Roth

Acting Regional Director
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